

TEXT OF SECOND PROPOSED MODIFICATIONS TO REGULATIONS

The Secretary of State has illustrated the proposed changes to the modified text in the following manner: proposed text of regulations is underlined; additions to the proposed text of the regulations are in bold, underlined, and highlighted; and deletions from the proposed text are shown in bold, with strikeout, and highlighted.

Chapter 13. Uniform Commercial Code

Article 1. General Provisions

§ 22600. Definitions.

(a) "Address" means a name or other identifying information, either a street address, route number (may include box) or PO Box number and city, state or country, and zip code, if applicable.

(b) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(c) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(d) "Business Programs Automation on-line system" means the web-based electronic filing service provided by the Secretary of State for the entry, transmission and retrieval of UCC records and requests for information.

~~(d)~~ **(e)** "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

~~(e)~~ **(f)** "Filing Officer statement" means a statement entered by the ~~filing office~~ **Secretary of State** into **the Business Programs Automation on-line system** its ~~information system~~ to correct an error made by the **Secretary of State's** ~~filing~~ office.

~~(f)~~ **(g)** "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

~~(g)~~ **(h)** "Initial Financing Statement" means a UCC record containing the information required to be in an initial financing statement, and that causes the **Secretary of State** ~~filing office~~ to establish the initial record of existence of a financing statement.

~~(h)~~ **(i)** "Remitter" means a person who tenders a UCC record to the **Secretary of State** ~~filing officer~~ for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the **Secretary of State** ~~filing office~~, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

~~(i)~~ **(j)** "UCC" means the Uniform Commercial Code as adopted in this state.

~~(j)~~ **(k)** "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.

~~(k)"Business Programs Automation on-line system" means the web-based electronic filing service provided by the filing office for the direct entry, transmission and retrieval of UCC records and requests for information.~~

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9526, Commercial Code.

§ 22600.1. UCC Record Delivery.

UCC records may be tendered for filing at the **Secretary of State's** ~~filing~~ office as follows.

(a) Personal delivery at the **Secretary of State's** ~~filing office's~~ street address. The file time for a UCC record delivered by this method is when delivery of the UCC record is

accepted by the **Secretary of State** ~~filing office~~ (even though the UCC record may not yet have been accepted for filing and subsequently may be rejected).

(b) Courier delivery at the **Secretary of State's** ~~filing office's~~ street address. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by **the Secretary of State's office** ~~a filing officer~~ for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery.

(c) Postal service delivery to the **Secretary of State's** ~~filing office's~~ mailing address. The file time for a UCC record delivered by this method is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the **Secretary of State's** ~~filing~~ office is not open for business will have a filing time of the close of business on the next day the **Secretary of State's** ~~filing~~ office is open for business.

(d) Telefacsimile delivery to the **Secretary of State's** ~~filing office's~~ fax filing telephone number. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, 5:00 P.M. on a day the **Secretary of State's** ~~filing~~ office is open to the public next following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the **Secretary of State's** ~~filing~~ office is not open for business, ~~[if not examined for processing sooner],~~ will have a filing time of the close of business on the next day the **Secretary of State's** ~~filing~~ office is open for business.

(e) Electronic filing. UCC records, excluding correction statements, may be transmitted electronically using the XML standard approved by the International Association of Commercial Administrators as described in rules 342 et seq. UCC records may also be transmitted electronically through on-line entry. The file date and time for a UCC record delivered by this method are the date and time that the **Business Programs Automation on-line** filing office's system receives it.

The appropriate fee shall be paid at the time a UCC record is submitted to the Secretary of State for filing. The methods of payment are United States currency, check, money order, cashier's check, credit card, electronic funds transfer, and debit to a prepaid customer account established with the Secretary of State.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9516, Commercial Code; **Section 12194, Government Code.**

§ 22600.2. Search Request Delivery.

UCC search requests may be delivered to the **Secretary of State's** filing office by any of the means by which UCC records may be delivered to the **Secretary of State's** filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9523, Commercial Code.

Article 2. Acceptance and Refusal of Records

§ 22600.3. Continuation Period for Financing Statements.

(a) First day permitted. The first day on which a continuation may be filed is the date corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.

(b) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9515, Commercial Code.

§ 22600.4. Procedure Upon Refusal.

If the **Secretary of State's office** ~~filing officer~~ finds grounds under Section 9516 of the UCC to refuse acceptance of a UCC record, the **Secretary of State's office** ~~filing officer~~ shall return the record. Unless otherwise requested, the **Secretary of State's office** ~~filing officer~~ may retain the fee pending resubmission of the record.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section **9516 and** 9520, Commercial Code.

§ 22600.5. Refusal Errors.

If a secured party or a remitter demonstrates to the satisfaction of the **Secretary of State's office** ~~filing officer~~ that a UCC record that was refused for filing should not have been **refused**, the **Secretary of State's office** ~~filing officer~~ will file the UCC record as provided in these rules with a filing date and time assigned when such filing occurs. The **Secretary of State's office** ~~filing officer~~ will also file a filing officer statement that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section **9516, 9520, and** 9526, Commercial Code.

Article 3. **UCC Information Management System Business Programs Automation On-line System** and Electronic Records

§ 22600.6. IACA Standard Adopted.

The XML **standard format** adopted by the International Association of Commercial Administrators is adopted in this state for electronic transmission of UCC records. **At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.**

22600.7. Record Filing Procedures.

(a) UCC records may be submitted directly to the **Secretary of State's filing** office using the Business Programs Automation on-line system which can be accessed through the **Secretary of State's filing office** website.

(b) Record Indexing. A submitter may index a record into the **Information Management System Business Programs Automation on-line system** by following the indexing procedures in the manner set forth in Section 22601 of these rules.

(c) Filing Date. The filing date of a UCC record is the date the UCC record is received as described in subdivision (e) of Section 22600.1.

(d) Filing Time. The filing time of a UCC record is the time described in subdivision (e) of Section 22600.1.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9519, Commercial Code.

§ 22600.8. Search Request Procedures.

(a) Search requests may be submitted directly to the **Secretary of State's filing office** using the Business Programs Automation on-line system which can be accessed through the **Secretary of State's filing office** website.

(b) Record Indexing. A submitter may index a debtor into the Information Management System by following the indexing procedures in the manner set forth in Section 22601 of these rules.

(c) Filing Date. The filing date of a UCC record is the date the UCC record is received as described in subdivision (e) of Section 22600.1.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9523, Commercial Code.

Article 4. Filing and Data Entry Procedures

§ 22600.9. Errors of **the Secretary of State's Office as** the Filing Officer.

The **Secretary of State's filing** office may correct data entry errors of **the Secretary of State's filing office** personnel in the **UCC Information Management System Business Programs Automation on-line system** at any time. If the correction is made after the **Secretary of State filing officer** has issued a certification date that includes the filing date of a corrected record, the **Secretary of State's office filing officer** shall proceed as follows. A filing officer statement record relating to the relevant initial financing statement will be placed in the **UCC Information Management System Business Programs Automation on-line system** on the date that the error was reported. The filing officer statement must provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the **UCC Information Management System Business Programs Automation on-line system**.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9526, Commercial Code.

§ 22601. Data Entry of Names – Designated Name Fields.

(a) Organization Names. Organization names are entered into the **UCC Information Management System Business Programs Automation on-line system** as set forth in the UCC record, even if it appears that multiple names are set forth in the record or it appears that the name of an individual has been included in the field designated for an organization name.

(b) Individual Names. On a form that designates separate fields for first, middle, and last names and any suffix, the **Secretary of State's office filing officer** enters the names into the first, middle, and last name and suffix fields in the **UCC Information Management System Business Programs Automation on-line system** exactly as set forth on the form.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9519, Commercial Code.

§ 22601.1. Master Filings.

(a) The **Secretary of State's office filing officer** may accept for filing a single UCC record for the purpose of amending or assigning more than one financing statement. Master amendments may accomplish one or both of the following purposes: amendment to change secured party name; amendment to change secured party address. Master assignments may accomplish a full assignment from a single assignor.

(b) A master filing shall consist of an electronic record describing the requested amendment or assignment submitted to the **Secretary of State's filing** office pursuant

to Section 22600.7 and a machine readable file furnished by the remitter ~~and created to the filing officer's specifications~~ containing appropriate indexing information. ~~A copy of master filing specifications is available from the filing officer upon request. Acceptance of a master filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.~~

Note: Authority cited: Section 9526, Commercial Code.

Reference: Sections 9519 and 9526, Commercial Code.

Article 5. Information Request and Search Response

§ 22601.2. General Requirements.

The ~~Secretary of State's office~~ ~~filing officer~~ maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement, and each filed UCC record relating to the initial financing statement.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9523, Commercial Code.

§ 22601.3. Search Requests.

Search requests shall contain the following information.

(a) Name Searched. A search request ~~should~~ **shall** set forth the name of a debtor to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

(b) Requesting Party. A search request ~~should~~ **shall** include the name and address of the person to whom the search report is to be sent.

(c) Fee. The appropriate fee shall be **enclosed** **paid at the time the request is submitted to the Secretary of State. The methods of payment are United States currency, check, money order, cashier's check, credit card, electronic funds transfer, and debit to a prepaid customer account established with the Secretary of State. It shall be payable by a method authorized by the filing office.**

(d) Search Request with Filing. If a filer requests a search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9523 **and 9525**, Commercial Code.

§ 22601.4. Rules Applied to Search Requests.

Search results are produced by the application of standardized search logic to the name presented to the **Secretary of State's office** **filing officer**. Human judgment does not play a role in determining the results of the search. The following apply to searches.

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction is made between upper and lower case letters.

(c) Punctuation marks and accents are disregarded.

(d) Words and abbreviations at the end of a name that indicate the existence or nature of an organization **as set forth in the "Ending Noise Words" list as promulgated and adopted by the International Association of Commercial Administrators** are disregarded.

(e) The word "the" at the beginning of the search criteria is disregarded.

(f) All spaces are disregarded.

(g) For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial J as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.

(h) After using the preceding rules to modify the name to be searched, the search will reveal only names of debtors that are contained in unexpired and expired financing statements and exactly match the names requested, as modified.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9523, Commercial Code.

§ 22601.5. Optional Information.

A UCC search request may contain any of the following information.

(a) The request may limit the records searched by using the address of the debtor, the date of filing (or a range of filing dates) or the identity of the secured party(ies) of record on the financing statements. The reports created by the **Secretary of State's office** **filing officer** in response to a request shall contain the statement:

“The search results herein reflect only the specific information requested. The results of the debtor search will not reflect variances of this name. If the debtor is known under other personal names, trade names, business entities, or addresses, separate searches of these names will have to be requested and conducted. The Secretary of State, his officers and agents disclaim any and all liability for a claim resulting from other filings on which the name of the debtor can be found in any other form than that which was requested.”

(b) The request may ask for copies of UCC records identified on the **primary** search response.

(c) **The request may include instructions** **Instructions** on the mode of delivery desired, if other than by ordinary mail, which request will be honored if the requested mode is available to the **Secretary of State's** **filing** office.

(d) Copies of unrelated records may be requested by providing the specific file numbers. The **Secretary of State's** **filing** office may limit the number of records that may be accepted in a single search request.

Note: Authority cited: Section **9523 and** 9526, Commercial Code.

Reference: Section 9526, Commercial Code.

§ 22601.6. Search Responses.

Reports created in response to a search request shall include the following.

(a) **Filing officer**. Identification of the **Secretary of State** **filing officer** and the certification of the **Secretary of State** **filing officer** required by law.

(b) Report Date. The date the report was generated.

(c) Name Searched. Identification of the name searched.

(d) Certification Date. The certification date and time for which the search is effective.

(e) Identification of initial financing statements. Identification of each unlapsed and lapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(f) History of Financing Statement. For each initial financing statement on the report, a listing of all related UCC records filed by the Secretary of State's office filing officer on or prior to the certification date.

(g) Copies. Copies of all UCC records revealed by the search and requested by the searcher.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Sections 9523 and 9526, Commercial Code.

Article 6. Other Notices of Liens

§ 22601.7. The following liens identified in Section 22601.8 are also filed with the Secretary of State pursuant to statutes other than the UCC. The liens are treated by the Secretary of State's filing office substantially the same as financing statements and are included on search responses pursuant to Commercial Code Section 9528.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9528, Commercial Code.

§ 22601.8. Types of Liens.

(a) Judgment Liens pursuant to the Code of Civil Procedure Sections 697.510-697.670.

(b) Attachment Liens pursuant to the Code of Civil Procedure Sections 488.300-488.485 and 488.500-488.510.

(c) Federal Tax Liens pursuant to the Code of Civil Procedure Sections 2100-2107.

(d) State Tax Liens pursuant to the Government Code Sections 7170-7174 and 7220-7229.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9528, Commercial Code.

§ 22601.9. A change to a judgment lien or attachment lien on file in the Secretary of State's Office shall not be accepted for filing unless it is properly submitted on a form prescribed for that purpose by the Secretary of State.

Note: Authority cited: Section 9526, Commercial Code.

Reference: Section 9528, Commercial Code.